

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL PENNESSI, et al.,

Plaintiff,

vs

Case No. 3:17CV286

**HANGER PROSTHETICS AND
ORTHOTICS INC.**

Defendant.

District Judge Walter H. Rice

PRELIMINARY PRETRIAL CONFERENCE ORDER

The captioned cause came on to be heard upon preliminary pretrial conference on 10/2/2017.

PERTINENT SETTINGS

- | | |
|--|------------------------------|
| 1. Required disclosures under Fed. R. Civ. P. 26(a)(1): | 10/6/2017 |
| 2. Settlement demand by Plaintiff upon Defendant to be made by: | done; response – 1/12/2018 |
| 3. Written notification to Court re: <u>contingent consent or Refusal to Magistrate Judge for trial purposes only:</u> * | close of business 10/26/2017 |
| 4. Discovery plan due:** | ----- |
| 5. Cut-off date for filing of motions directed to pleadings (including motions to dismiss filed pursuant to Fed. R. Civ. P. 12): | 10/30/2017 |
| 6. Cut-off date for filing of motion to amend and to add parties: | 10/30/2017 |

7. If applicable, not later than the date specified, the Plaintiff will furnish to the Defendant a medical package, consisting of reports, medical bills, list of special damages, certification of wage loss, hospital bills, hospital records, other bills and expenses, etc. Plaintiff's counsel is under a continuing duty to update or supplement the medical package as further information becomes available. _____ - - - - -
8. Identification of lay witnesses with synopsis of their testimony to be filed by: _____ 4/2/2018
9. The dates to reveal the identity of expert witnesses and to provide a copy of the expert's report (Rule 26(a)(2)(B)) or the subject matter and summary of facts and opinions for experts not required to prepare reports (Rule 26(1)(2)(C)) are:
- Plaintiff(s) to Defendant(s) _____ 3/1/2018
- Defendant(s) to Plaintiff(s) _____ 4/2/2018
- Rebuttal Expert(s) _____ Pltf – 5/1/2018; Dft - 4/2/2018
10. Request for admissions: _____ 5/4/2018
11. Cut-off **DEADLINE** for discovery: _____ 6/5/2018
12. Status conference following discovery deadline to explore ADR options:
(By telephone with Judge Rice who will manage case from this point forward to resolution or trial unless otherwise ordered.) _____ Tuesday, 6/12/2018 at 5:00 pm
13. Cut-off date for filing of motions for summary judgment: _____ 7/5/2018
14. Cut-off date for all other pretrial motions, i.e., motions in limine, motions for a view, etc.: _____ Tuesday, 10/9/2018
15. Joint Final Pretrial Order by parties to be filed no later than: _____ Tuesday, 10/16/2018
16. Trial exhibits to be exchanged by: _____ Friday, 10/19/2018

17. Final Pretrial Conference to be held:

In Chambers on:

By Telephone Conference Call on:

Tuesday, 10/23/2018 at 5:00 pm

18. Deadline for submitting proposed jury instructions
(To include verdict forms and interrogatories)
to the Court in both hard copy and diskette form
and original copies of depositions, with designations,
that counsel intend to use at trial:

At least 10 days prior to trial

19. Deadline for submitting counter-designations:

At least 10 days prior to trial

20. Trial on the merits,

before the Court, beginning:

to a jury, beginning:

11/5/2018

21. Law Clerk assigned to case:

Lisa Woodward

22. Magistrate Judge assigned to case:

Sharon L. Ovington

*In order to guarantee the availability of a judicial officer to try your case on the date set in this entry, it is the request of the Court that each counsel speak with his/her client as to the possibility of consenting to a referral to the Magistrate Judge for purposes of trial only. In this fashion, the undersigned will handle all aspects of this litigation subsequent to the discovery cut-off including the trial (if he is available). If the undersigned is otherwise committed in trial on the date set for trial herein, the Magistrate Judge who has managed the case through the discovery cut-off will be able to try this case. Absent a referral to the Magistrate Judge (and it is always the right of the party to so refuse), the undersigned will try this case on the date set, or upon a very short-term trailing docket thereafter, even if it means trying more than one case at a

given time. Please notify the Court in writing as to your client's wishes in this regard not later than 20 days from the date of the preliminary pretrial conference.

****The discovery plan, which is to be filed only if a Rule 26(f) report has not been filed by the Preliminary Pretrial conference,** is that contemplated in Fed. R. Civ. P. 16 and 26(f). The joint discovery plan must identify the issues and sub-issues (factual and legal) for trial and for discovery purposes, establish a plan and schedule for discovery (how and from whom discovery is to be obtained, the discovery vehicle to be used for the obtaining of said discovery (depositions, interrogatories, etc.), a sequence or timetable for the obtaining of that discovery, set limitations upon discovery, if any; and determine such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action.) A discovery order may be altered or amended, upon leave of Court being first obtained, whenever justice so requires.

THE FAILURE TO FILE A DISCOVERY PLAN WITHIN THE DATE SET FORTH ABOVE WILL MEAN THE VACATION OF THE TRIAL DATE PREVIOUSLY SET, AS A SANCTION UPON PLAINTIFF, AND, SHOULD THIS COURT DETERMINE THAT THE FAILURE TO FILE THE DISCOVERY PLAN IS THE FAULT OF THE DEFENDANT, THE IMPOSITION OF SANCTIONS UPON THAT PARTY AND HIS ATTORNEY.

ANY VIOLATION OF THE DISCOVERY PLAN RENDERS THE OFFENDING PARTY SUBJECT TO APPROPRIATE SANCTION UNDER FEDERAL RULES OF CIVIL PROCEDURE.

There will be no continuation of discovery beyond the discovery cut-off date, absent express approval of the Court or the Magistrate Judge obtained upon showing of good cause.

The discovery "cut-off" deadline means that ALL discovery must be concluded, as opposed to simply requested, by the discovery "cut-off" date. Purely as a hypothetical example, request for the production of documents, with a 28-day response time, must be served upon the opposing party in sufficient time to allow said party to respond prior to the discovery "cut-off" date.

Except for good cause shown, no extension of the discovery "cut-off" deadline will be allowed if such extension would impact adversely on the date set for the filing of motions for summary judgment or the trial date set herein.

In order to make certain that progress towards disposition of the captioned cause does not become "gridlocked" by discovery disputes, this Court would offer an invitation to counsel of record, should such a discovery dispute arise, prior to the discovery cut-off deadline, and, further, should the parties have exhausted all extra-judicial means of resolving same, to call the Magistrate's office, in order to advise the Magistrate's Courtroom Deputy of the need for a brief discovery conference. The Magistrate will then convene a brief discovery conference in the hope of resolving the impasse without the necessity of filing motions to compel, motions for protective order, etc.

****Pursuant to 28 U.S.C. §636(b), this case is hereby referred to the assigned United States Magistrate Judge from the date of this Order until the discovery cut-off date set herein on any extension granted by the Magistrate Judge or District Judge. At which time Judge Rice will assume management of said case through resolution or trial, unless otherwise ordered. The Magistrate Judge to whom the case is referred is authorized to perform any and all functions authorized for full-time United States Magistrate Judges by statute, including, without limiting the generality of the foregoing, all motions to remand removed cases to state court, all motions to dismiss or for judgment on the pleadings under Fed. R. Civ. P. 12, and all discovery-related motions. In each such case, the Magistrate Judge shall proceed in accordance with Fed. R. Civ. P. 72.**

IT IS SO ORDERED.



WALTER H. RICE
UNITED STATES DISTRICT JUDGE